IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 312 OF 2001 AND MISCELLANEOUS CIVIL APPLICATION NO. 231 OF 2002.

1. Shri Mathucutty Kurian Chakalackal, Principal, Holy Trinity High School, Benaulim, Salcete-Goa.
2. All Goa Secondary School Teachers' Association, a Registered Society, represented by its President Ravindra S. Nagwekar, Assistant Teacher, Sarvodaya Educational Society's High School, Curchorem.
3. Goa Headmasters' Association, a Society, represented by its President Shri Vassudev R. Dhavalikar, Headmaster, Swastic Vidyalaya, Priol, Mardol-Goa.
4. Shri Prakash Gaonkar, Teacher, RPRS High School, Bandora-Goa.
5. Principals' Forum through their President Shri Eknath Naik, having office at Shri Navdurga Higher Secondary School, Madkai, Ponda. ... Petitioners.

Versus

1. State of Goa through its Chief Secretary, Secretariat, Panaji.
2. Director of Education, Panaji.
3. Union of India through Secretary, Ministry of Home Affairs, New Delhi. ... Respondents.

Mr. M.S. Sonak, Advocate for the Petitioners.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Additional Government Advocate for the Respondents 1 and 2.

Mr. V.P. Thali, Senior Central Government Standing Counsel for the Respondent No. 3.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 29th July 2003.

ORAL JUDGMENT (PER REBELLO, J.)

The petitioner no. 1, at the time of filing the petition, was employed as Principal of the Holy Trinity Higher Secondary School, Benaulim. Petitioner no. 1 has, however, taken retirement under Voluntary Retirement Scheme, which was accepted by communication, dated 27th November 2001. Petitioners 2, 3 and 5 are Societies/Associations founded to espouse the cause of Teachers, Headmasters, Principals and members working in Aided Schools throughout the State of Goa and petitioners 2, 3 and 5 are registered under the Societies Registration Act, 1980. Petitioner No. 4 is a teacher employed with the RPRS High School, Bandora-Goa.

2. The petitioners had approached this Court contending that prior to 14th November 1986, the service conditions of the employees in Aided schools were governed by a set of executive instructions referred to as 'Grant-in-Aid Code'. In terms of the Code, the age of retirement for employees of Aided Schools was 60 years. The Legislative Assembly of the State of Goa, Daman and Diu was pleased to pass the Goa School Education Act, 1984 and framed Rules thereunder. Under Section 11(1) it was provided that the Government may make Rules regulating the recruitment, minimum

qualifications for recruitment and the conditions of service of employees of recognized private schools. The first proviso provided that neither salary, nor the rights in respect of leave of absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantage of such employees. The second proviso provided that every such employee shall be entitled to opt for the terms and conditions of service as were applicable to him immediately before the commencement of this Act. The petitioners have averred that the age of retirement insofar as those in employment at the time of commencement of the Act was 60 years, as per the provisions of the 'Grant-in-Aid Code'. Somewhere in August 2000, the respondent State in exercise of its power vested under proviso to Article 309 of the Constitution of India, was pleased to make Rules known as the Goa State Civil Service (Retirement) Rules 2000. In terms of the said Rules, the age of retirement was on the afternoon of the last day of the month in which the employee attains the age of 58 years. It was contended on behalf of the petitioners that the Goa State Civil Services (Recruitment) Rules, 2000 are not applicable to the employees of Aided Schools as they do not come within the definition of the term 'Government Servant'. It was also contended that the provisions of Article 309 of the Constitution of India

are itself inapplicable and consequently there arises no question of framing any Rules to govern the service conditions of such employees relying on the proviso to Article 309 of the Constitution of India. By Circular issued by respondent no. 1, dated 22nd September 2000, it was clarified that the said Rules of 2000, are inapplicable to teachers and other teaching staff in respect of whom the age of superannuation continues to be 60 years. It is the petitioners further case that the respondents further clarified that the Goa State Civil Services (Retirement) (First Amendment) Rules, 2000, shall not apply to teachers and other teaching staff. By Notification, dated 31st August 2001, an amendment came to be effected to the Goa State Civil Service (Retirement) Rules, 2000. The effect of the amendment was that on and from the date of coming into force of the Goa State Civil Services (Retirement) (Second Amendment) Rules, 2001, the teachers and other teaching staff who have either completed or due to complete the age of 58 years before 30th November 2001, were to retire from service with effect from 30th November 2001. A Voluntary Retirement Scheme was also proposed by the respondent State. It is the contention of the petitioners that, based upon the said amendment, the respondents are bent upon retiring the teachers and other teaching staff of Aided Schools. It is, therefore, submitted that the action of the respondents

in trying to retire teachers at the age of 58 years under the said Rules for various reasons and contentions as raised in paragraphs 23C and 23D is illegal and, therefore, the relief as prayed for.

3. During the pendency of the petition, the Legislative Assembly of the State of Goa has been pleased to enact the Goa School Education (Amendment) Act 2002. Earlier an Ordinance was issued which came into effect from 1st November 2001. The amendment provides that Section 2(i) of the Act shall be deemed to have come into force with effect from 14th November 1986 and Section 2(ii) shall be deemed to come into force with effect from 3rd September 2001. By virtue of Sub-Section (1) both the provisos have been omitted and by virtue of Section 2(ii), Sub-Section (1A) has been included, which reads as under:-

> "(1A) Notwithstanding anything contained in any other provision of this Act or the rules framed thereunder or any law for the time being in force or any notification, regulation, decree, Order, Circular, Judgment or instructions, every employee of a recognized private school, aided or not, shall retire at the age of 58 years."

Pursuant to the amendment, the petitioners have amended the petition challenging the provisions of the Ordinance and the Act also on various grounds as set out therein.

4. An affidavit in reply was first filed on 4th June 2002 by Shri Sanjeev Khirwar. An additional affidavit has been filed by Shri Gajanan L. Pernekar, which is dated 4th June 2002. It is contended therein that pursuant to the enactment of the Legislation by the State neither the principle of promissory estoppel nor equitable estoppel can be invoked. It is also pointed out that there is no violation of the Articles 14 and 16 of the Constitution of India. Various challenges have been raised and dealt with. A third affidavit has been filed on 13th January 2003 by Shri Arvind Ray, Secretary Education, Government of Goa. Again various contentions have been raised. It has been pointed out that in the case of **K. Nagaraj and others etc., etc. v. State of Andhra Pradesh and another etc.**, A.I.R. 1985 S.C. 551, the Apex Court has held that it was open to the State Government to fix the age of superannuation including reducing or increasing the age of retirement under authority of law and that such an act would not amount to deprivation of the right to livelihood under Article 21 of the Constitution of India.

5. The petition now can be considered on the touchstone of the amendment brought about by the Legislature of the State of Goa, being the Goa School Education (Amendment) Act, 2002. Section 2(i) came into force with effect from 14th November 1986 and Section

2(ii) came into force with effect from 3rd September 2001. On behalf of the petitioners, their learned counsel contends, relying upon Section 11 and the two provisos to the Section, that once their age of retirement had been protected, the respondent State could not have take away that right, which was vested in them. For that purpose firstly reliance has been placed on the Judgment of the Apex Court in the case of **S.P. Dubey v. Madhya Pradesh State Road Transport Corporation and another**, 1991 Supp (1) S.C.C. 426. In that case the appellant before the Apex Court had joined the services of Central Provinces Transport Services Limited, wherein the age of retirement of all employees except drivers was 60 years. The company was purchased and taken over by the State of Madhya Pradesh. A Notification was issued which provided that the existing staff would not be adversely affected with regard to the terms and conditions of their services. The State of Madhya Pradesh was reorganized under the States Reorganization Act, 1956. The Central Government, by a Notification dated 28th February 1961, extended the provisions of Road Transport Corporation Act, 1950 to the State of Madhya Pradesh with effect from 1st April 1961. Thereafter the Madhya Pradesh State Road Transport Corporation was set up with effect from 21st May 1962. Two memoranda were issued on 4th May 1962. By the first memorandum, the services of the concerned

employees like Dubey were transferred to the Corporation and the second memorandum provided that the transfer was subject to the conditions that their service would be treated as uninterrupted and their pay scales and conditions of service would not be affected. A Resolution to that effect was passed on the same day. The State Government under Section 34 issued directions on 28th October 1963 setting out that employees who fall within that category shall be employed by the Corporation subject to such regulations as may be made by it under Section 45(2)(c) of the Road Transport Corporation Act, 1950 (Central Act 64 of 1950), and subject to such assurances as may have been given to them by the State Government. Regulations were thereafter framed and under Regulation 59 it was set out that the employees of the State Transport Corporation are liable to be compulsorily retired on the date of their completion of 58 years of age unless specifically permitted by the Corporation to continue in service for a specified period thereafter. Dubey was issued a notice on reaching the age of 58 years, which was challenged by him before the Madhya Pradesh High Court. The petition was dismissed. In the appeal preferred the Apex Court held that when the State Government takes over a private company and gives an assurance of the type given, it is but fair that the State Government should honour the same and, as such, the Rules would not

be made applicable to the appellant and other employees of the taken-over company. The Apex Court also held that the State Government and also the Corporation had given assurance to the appellant and other employees who were transferred to the Corporation that their conditions of service would not be adversely affected. The said assurance was incorporated in the directions issued under the Act and in these circumstances the Corporation cannot frame regulations contrary to the directions issued by the State Government under Section 34 of the Act. For that reason, the appeal was allowed.

The next Judgment relied upon is in the case of **Surya Narain Yadav and others v. Bihar State Electricity Board and others,** (1985) 3 S.C.C. 38 wherein the principle of promissory estoppel was invoked to hold that Statutory bodies were bound by representations made by them to their employees relying upon which the employees acted to their own prejudice. The Apex Court held that the Board was bound to honour its representations and assurances and regularise the appointments of the trainees.

In **Bhim Singh and others v. State of Haryana and others,** (1981) 2 S.C.C. 673, again the doctrine of promissory estoppel was involved to protect the service conditions of the employees therein. These Judgments,

therefore, do not deal with the case where the State Legislature has amended the laws reducing the age of retirement.

6. The law is now well settled that it is open to the State Government in exercise of powers vested in it to fix the age of retirement. Once having fixed the age of retirement, it is also open to the State Government to either lessen or increase the retirement age. In the instant case it is no doubt under Section 11 of the Goa School Education Act as enacted it is provided that the employees employed in the Government Aided Schools would be governed by the provisions of the Act and the Rules; their rights including the age of retirement shall not be varied to the disadvantage of the employees and by the second proviso it was provided that the employees shall be entitled to opt for the terms and conditions of service. We are really not concerned with this proviso. The State Assembly, however, thereafter has dropped both the provisos with effect from 14th November 1986. In other words Section 11 will now have to be read without those said provisos as of 14th November 1986 when the School Education Act came into force and with the newly added Sub-Section (1A). By Sub-Section (1A), the age of retirement has been fixed as 58 years. The legislation is within the legislative competence of the State Legislature. It is the State which funds the school.

It is, therefore, open to the State to enact a law within its competence and provide for the conditions and services of teachers employed in Aided Schools. The Goa School Education (Amendment) Act 2002 has so provided. Once it is within Legislative competence and reduction of age will not amount to either violation of Article 21 or for that matter Article 16. There is, therefore, no merit in this petition.

The Petition alongwith the Miscellaneous Civil Application, are, therefore, dismissed. In the light of that Rule discharged with no order as to costs.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

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